

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

JAMES SPANN, Register No. 160792,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 06-4042-CV-C-NKL
	)	
LARRY CRAWFORD, Director, et al.,	)	
	)	
Defendants.	)	

**REPORT, RECOMMENDATION AND ORDER**

Plaintiff James Spann, an inmate confined in a Missouri penal institution, brought this case under the Civil Rights Act of 1871, 42 U.S.C. § 1983, and its corresponding jurisdictional statute, 28 U.S.C. § 1343. This case was referred to the undersigned United States Magistrate Judge for processing in accord with the Magistrate Act, 28 U.S.C. § 636, and L.R. 72.1.

On March 8, 2007, plaintiff filed a motion for default judgment against defendant Grisham. Defendant Grisham has not responded to the court's order of February 6, 2007, or to plaintiff's complaint. A default judgment may be entered "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend." Fed. R. Civ. P. 55. Defendant Grisham has failed to answer plaintiff's complaint or respond to the court's order of February 6, 2007. Plaintiff is advised that an entry of default judgment does not entitle him to the amount of damages sought in his motion or complaint. The issue of damages is a separate matter to be considered at a later date in the proceedings.

On February 26, 2007, plaintiff filed a motion for appointment of counsel. On March 23, 2006, and February 6, 2007, this court denied plaintiff's prior requests. A review of the record does not reveal a significant change in circumstances since that time. If plaintiff's claims survive dispositive motions at the close of discovery or if exceptional circumstances occur, he may renew his request. Accordingly, for the reasons previously set forth, plaintiff's motion will be denied.

On February 20, 2007, plaintiff filed a document titled "Plaintiff Motion against Defendants for their Conditions of Confinement were Atypical and Significant Hardships in Relations to the Ordinary Incidents of his Prison Life by their policy of Special Security Observation." His prayer for relief requests the court to grant his motion. It is not clear whether plaintiff intends his motion to be for judgment on the pleadings or for summary judgment. Plaintiff's motion sets forth facts relevant to his case, but does not include affidavits or other admissible evidence. Accordingly, plaintiff is directed to clarify for the court whether he intends his motion to be a motion for judgment on the pleadings.

IT IS, THEREFORE, ORDERED that within twenty days, plaintiff notify the court, in writing, whether he intends his motion of February 20, 2007, to be a motion for summary judgment or judgment on the pleadings, or whether he was seeking some other kind of relief. It is further

ORDERED that plaintiff's motion of February 26, 2007, for appointment of counsel is denied, without prejudice. [59] It is further

RECOMMENDED that plaintiff's motion of March 8, 2007, for the entry of default against defendant Grisham be granted. [64]

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within twenty days. The District Judge will consider only exceptions to the specific proposed findings and recommendations of this report. Exceptions should not include matters outside of the report and recommendation. Other matters should be addressed in a separate pleading for consideration by the Magistrate Judge.

The statute provides for exceptions to be filed within ten days of the service of the report and recommendation. The court has extended that time to twenty days, and thus, additional time to file exceptions will not be granted unless there are exceptional circumstances. Failure to make specific written exceptions to this report and recommendation will result in a waiver of the right to appeal. See L.R. 74.1(a)(2).

Dated this 21<sup>st</sup> day of March, 2007, at Jefferson City, Missouri.

/s/ William A. Knox

WILLIAM A. KNOX  
United States Magistrate Judge